

IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF ALABAMA MIDDLE DIVISION

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U.S. BANCORP EQUIPMENT FINANCE, )  
INC., a corporation, )

Plaintiff, )

vs. )

AFKO, INC., and FRANK E. JOHNSTON, )

Defendants. )

DEBRA P. HACKETT, CLK  
U.S. DISTRICT COURT  
Case No. MIDDLE DISTRICT ALA

2:06cv197-1D

COMPLAINT

COMES now the plaintiff, U.S. Bancorp Equipment Finance, Inc. ("US Bancorp"), and for its complaint against the defendants, AFKO, Inc. ("AKFO") and Frank E. Johnston ("Johnson"), says as follows:

JURISDICTION

1. US Bancorp is a corporation organized and existing under the laws of the State of Oregon with its principal place of business in the State of Oregon.

2. Upon information and belief, AFKO is a corporation organized and existing under the laws of the State of Alabama with its principal place of business in the State of Alabama.

3. Upon information and belief, Johnston is believed to be an adult citizen of Marshall County, Alabama.

4. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

5. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a)(1).

**COUNT ONE**

6. US Bancorp incorporates herein all allegations and averments of paragraphs 1 through 5 above.

7. Pursuant to a Loan and Security Agreement with Firststar Bank, N.A., dated June 18, 2001 (the "Loan Agreement"), AFKO financed the purchase of the following items of equipment:

2001 Peterbilt 379	1NP5DB9X51N559384
2001 Miracle 7-car Trailer	1A9CS45ZX1A468049

A true and correct copy of the Loan Agreement is attached hereto as Exhibit A. US Bancorp has succeeded to the interest of Firststar Bank, N.A, under the Loan Agreement.

8. AKFO defaulted in payment under the Loan Agreement, and the equipment was repossessed. After selling the equipment and applying credit to the Loan Agreement, the balance owed to US Bancorp is \$92,429.33, plus attorney's fees and other charges, which are provided for in the Loan Agreement.

WHEREFORE, PREMISES CONSIDERED, the plaintiff, U.S. Bancorp Equipment Finance, Inc., respectfully demands judgment against defendant AFKO, Inc., in the principal amount of \$92,429.33, plus interest, all costs of collection including, but not limited to, reasonable attorneys' fees and expenses, and other charges. U.S. Bancorp further prays that this Court will grant such other and further relief as it may deem appropriate.

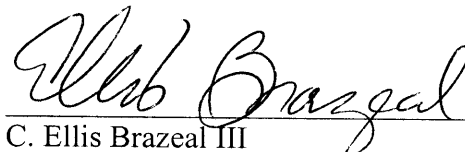
**COUNT TWO**

9. U.S. Bancorp incorporates herein all allegations and averments of paragraphs 1 through 8 above.

10. As a condition of Firststar Bank, N.A., entering into the Loan Agreement, Johnston executed and submitted an absolute, unconditional, and unlimited guaranty of the Loan Agreement. A true and correct copy of the guaranty is attached hereto as Exhibit B. US Bancorp has succeeded to the interest of Firststar Bank, N.A., in said guaranty.

11. Pursuant to his guaranty, Johnston is indebted to US Bancorp in the amount of \$92,429.33, plus attorneys' fees and other charges, all of which are provided for in the guaranty.

WHEREFORE, PREMISES CONSIDERED, the plaintiff, U.S. Bancorp Equipment Finance, Inc., respectfully demands judgment against defendant Frank E. Johnston in the principal amount of \$92,429.33, plus interest, all costs of collection including, but not limited to, reasonable attorneys' fees and expenses, and other charges. US Bancorp further prays that this Court will grant such other and further relief as it may deem appropriate.

  
C. Ellis Brazeal III  
Attorney for the Plaintiff, U.S.  
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**PLEASE RETURN COMPLAINT TO COUNSEL FOR US BANCORP FOR SERVICE**